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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

SEP 10 2003

File: LIN 02 276 55525 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Nebraska Service Center director. The petitioner appealed the director's decision, and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a semi-professional rugby club and a member of the Rugby Super League that is comprised of 16 clubs including the petitioner. The beneficiary is described as a professional rugby player. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking an extension of classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act) for a period of three years. The petitioner seeks to employ the beneficiary temporarily in the United States to play rugby.

The director denied the petition, finding that the record was insufficient to show that the beneficiary would be participating in athletic competitions which have a distinguished reputation and that the services to be performed by the beneficiary require an internationally recognized athlete. The director further found that the evidence did not establish that Rugby Super League or Division I Rugby is a major league sport that requires P-1 caliber aliens.

On appeal, counsel for the petitioner submits a brief and additional documentation. Counsel for the petitioner argues that the beneficiary's salary package is much larger than stated on the petition and as such is evidence that the petitioner is a major league team that requires P-1 caliber athletes.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

- (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and

- (ii) seeks to enter the United States temporarily

and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

8 C.F.R. § 214.2(p)(1)(i) provides for P-1 classification of an alien:

General. Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team . . .

8 C.F.R. § 214.2(p)(1)(ii)(A) provides for P-1 classification of an alien:

(1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance . . .

8 C.F.R. § 214.2(p)(2)(ii) requires, in part, that a petition for an internationally recognized athlete include:

(A) The evidence specified in the specific section of this part for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events and activities, and a copy of any itinerary for the events and activities; and

(D) A written consultation from a labor organization.

8 C.F.R. § 214.2(p)(3) states that:

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country.

8 C.F.R. § 214.2(p)(4)(i)(A) provides, in pertinent part, that:

P-1 classification as an athlete in an individual capacity. A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

8 C.F.R. § 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

(A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on

his or her reputation. A petition for a P-1 athlete or athletic team shall include:

(1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and

(2) Documentation of at least two of the following:

(i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;

(ii) Evidence of having participated in international competition with a national team;

(iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;

(iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized;

(v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;

(vi) Evidence that the individual or team is ranked if the sport has international rankings; or

(vii) Evidence that the alien or team has received a significant honor or award in the sport.

8 C.F.R. § 214.2(p)(7)(i) requires, in pertinent part:

(A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

The two issues in this matter are whether the petitioner is a major United States sports league or team as required by 8 C.F.R. § 214.2(p)(4)(ii)(B)(1) and whether the beneficiary is coming to the United States to compete at an internationally recognized level as required by 8 C.F.R. § 214.2(p)(1)(ii)(A).

The petitioner failed to establish that the beneficiary has a contract with a major United States sports league or team. The term *major United States sports league or team* is not defined in the Act or regulations, but the common usage of the term is a team or league of principal importance in professional sports.¹ The term professional when applied to P-1 athletes means a person who derives his livelihood from the profession of athletics. In the instant case, the beneficiary would be paid a stipend of \$1000 per month plus additional expenses. The record does not establish that all members of the petitioner's club are compensated or that they derive their livelihood from rugby. The preponderance of the evidence on the record indicates that the team is an amateur club.

According to the record, rugby in the United States is governed by the United States of America Rugby Football Union (USA Rugby). USA Rugby oversees the national team (the Eagles) as well as more than 1,500 rugby clubs (men's, women's, collegiate and youth). The U.S. Men's Club rugby is divided into three divisions consisting of approximately 450 clubs. 200 clubs compete within Division I. The petitioning team is a Division I team. Division I teams compete for a National Championship. Although Division I teams have greater stature than a team in Division II or III, they do not have the highest ranking. The national team, the Eagles, is at the very top of the ranking in the United States and competes at an international level. The petitioner falls below the Eagles in ranking, and may not be considered as a team of principal importance in U.S.

¹ Webster's II New College Dictionary, 2nd edition, 2001.

rugby.

As evidence that the petitioner is a major league United States sports team, counsel for the petitioner argues that the beneficiary's compensation package is much larger than stated on the petition. On appeal, counsel asserts that the beneficiary receives more than a monthly stipend of \$1,000. Counsel states that the petitioner agrees to pay the beneficiary's travel and lodging expenses for all away games. Counsel states that the petitioner has provided the beneficiary with exclusive use of an insured club car and medical insurance. Counsel states that the petitioner agrees to provide the beneficiary with a shared apartment or housing allowance and reimbursement of one round trip airfare to his home in New Zealand. Counsel further asserts that the petitioner pays this compensation to the beneficiary in exchange for the beneficiary's commitment of six hours a week for ten weeks. Six hours per week is not commensurate with a level of commitment one would expect from a major league sports team in the United States.

The initial petition stated that the petitioner would pay the beneficiary approximately \$20,000 a year plus benefits worth \$300 a week (\$15,600/year). The petitioner included a copy of a contract with the beneficiary that states it would pay the beneficiary \$1,000 per month. Even if the petitioner compensated the beneficiary at the revised total compensation package of \$31,020, this is not an amount indicative of athletic competition at the highest professional level in the United States. The contracts of major league players in more popular sports in the United States offer salaries of up to several million dollars.

Other indicia of a major league team might include significant television contracts, a presence in major metropolitan markets, commercial sponsorships from athletic equipment companies, and teams comprised of internationally recognized players. This is not an exhaustive or exclusive list of indicia of a major league team.

In response to the director's request for additional evidence, the petitioner informed the Bureau that Rugby Super League had obtained television contracts. The director determined that television contracts for coverage of Rugby Super League results and championship matches on a weekly, half-hour regional sports show do not constitute significant television contracts. The AAO concurs.

In support of its argument that the petitioner is a major league team, counsel for the petitioner asserts that the petitioner team is a member of a league "at the Premier Level of Men's Club competition in the USA." In this case, premier level is not tantamount to major sports league or team status.

As evidence that members of the petitioner's club are internationally recognized, the petitioner submitted a list of its members with their corresponding levels of play. The petitioner failed to establish the significance of the different levels of play.

Counsel states that the petitioner's league's status as a major league sport is evidenced by its corporate sponsorship by KooGa, a rugby apparel and equipment supplier. According to the evidence on the record, the petitioner is sponsored by North Park Tap, a Chicago bar, and Bacardi, among others. Corporate sponsorship is just one indicia of major league status. Corporate sponsorship alone is insufficient indicia of major league status.

In any event, the petitioner failed to meet the threshold requirement that the team be a professional, rather than an amateur, team. The petitioner failed to establish that the petitioner club is a major sports league or team.

The petition indicates that the beneficiary will be performing as an athlete in the Rugby Super League in national competition and in Division I competition, in regional, national and international competition. The petitioner failed to establish that the beneficiary would be participating in athletic competitions which have a distinguished reputation and that the services to be performed by the beneficiary require an internationally recognized athlete. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In review, the petitioner failed to overcome the director's objections.

ORDER: The appeal is dismissed.